

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-145

July 8, 2002

PINE TREE TELEPHONE COMPANY
SACO RIVER TELEPHONE COMPANY
Request for Approval of Reorganization
with Regard to Country Road
Communications

ORDER APPROVING REVISED
STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we approve a Revised Stipulation that approves various reorganizations of Saco River Telephone Company and Pine Tree Telephone Company and revises existing exemptions and waivers from the affiliated interest statutes (35-A M.R.S.A. §§ 707 and 708).

II. STANDARD FOR APPROVAL OF STIPULATIONS

To accept a stipulation the Commission must find that:

1. the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
2. the process that led to the stipulation was fair to all parties; and
3. the stipulated result is reasonable and is not contrary to legislative mandates.

See Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995), and Maine Public Service Company, Proposed Increase in Rates (Rate Design), Docket No. 95-052, Order (Me. P.U.C. June 26, 1996). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. See Northern Utilities, Inc., Proposed Environmental Response Cost Recovery, Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997). We find that the proposed Stipulation in this case meets all these criteria.

The Stipulation before us was entered into between the Company and the OPA. In past cases, we have found that these two entities, representing often opposite views in the ratemaking process, constitute a sufficiently broad spectrum of interests to satisfy the first criterion. *See Public Utilities Commission, Investigation of Stranded Cost Recovery, Transmission and Distribution Utility Revenue Requirements and Rate*

Design of Bangor Hydro-Electric Company (Phase II), Docket No. 97-596, Order at 6 (Feb. 29, 2000) and *Maine Public Utilities Commission, Investigation of Retail Electric Transmission Services and Jurisdictional Issues*, Docket No. 99-185, Order Approving Stipulation (Maine Public Service Company) at 3 (Aug. 11, 2000). In this case, we also note that our Advisory Staff was an active participant in the settlement process and has supported the Stipulation. We are satisfied, therefore, that a broad spectrum of interests are represented by the Stipulation.

We also find that the second criterion has been met. Specifically, our review of the procedural history in this case indicates that the process was fair.

Finally, as discussed below, we find that the stipulated result is reasonable.

III. DISCUSSION

As required by 35-A M.R.S.A. § 708(1), we find that the five reorganizations listed in the Revised Stipulation are not inconsistent with the interests of the ratepayers and shareholders of the applicants, Saco River Telephone Company and Pine Tree Telephone Company, whose rates are directly regulated by the Commission. We also find that the exemptions from 35-A M.R.S.A. § 707 (affiliated transactions) and 708 (reorganizations) contained in the Revised Stipulation are reasonable. We have granted similar exemptions (through the approval of stipulations) to both companies in the past. The most significant revision contained in the present Revised Stipulation results from one of the reorganizations approved in this case. The former role of Prudential as a significant investor in Country Road Communications, Inc. (CRC) (now Country Road Communications LLC (CRC LLC)¹), the ultimate parent of Saco River and Pine Tree, is significantly diminished, and the present Stipulation eliminates the former complex special exemption provision stating that Prudential was not an affiliated interest, but nonetheless requiring Prudential to obtain certain approvals. The new major investor in CRC will be ABRY Partners, which will be subject to the same requirements and exceptions as other affiliated interests in the ownership chain.

The initial Stipulation filed by the parties required (through an exception to the general exemption) that the companies obtain approval for “restructurings” of Saco River, Pine Tree, entities that are in the chain of ownership above either of those utilities, and subsidiaries of either utility. A “restructuring” was defined, *inter alia*, as the “creation of an affiliated interest that owns more than 20% of the entity described.” At our initial deliberations on this Stipulation, we asked whether the parties had any particular reason for the 20% ownership level, given that the statutory level is 10%. We requested that Saco River and Pine Tree either provide justification for the deviation from the statutory standard or, in the alternative, that the parties file a revised Stipulation that uses the statutory 10% ownership level. The parties chose the latter

¹ The conversion of Country Road Communications, Inc. into Country Road Communications LLC is one of the reorganizations approved by the Stipulation.

route, and it is therefore not necessary to address a justification for any deviation. If future stipulations propose to use ownership levels higher than the 10% in the definition of restructuring, the utility party should provide sound justification for the deviation.

As is the case with all of the similar stipulations that grant exemptions from the affiliated interest statutes for local telephone companies (incumbent LECs), the present Revised Stipulation states a broad general exemption from the reorganization statute (section 708), and then lists (as “exceptions” to the general waiver) the specific reorganizations (or “restructurings”)² that continue to need approval by the Commission. We are concerned, however, that if a Stipulation fails to list an events that should require approval, it will be subject to the general exemption. In short, the present structure of these exemptions puts the burden on the non-utility parties to make sure that reorganizations or restructurings that should be subject to Commission approval are in fact listed as exceptions to a general rule of exemption. We are aware of some circumstances that have not been listed in the past and have not needed approval as a result; upon discovery, parties have on some occasions agreed to modify existing or future stipulations.

Parties negotiating future stipulations should consider using the opposite model: a statement of the reorganizations that do not require approval and a general statement that all other reorganizations do require approval. If, in the future, it is reasonably debatable whether a particular reorganization or restructuring requires approval under one of the stipulations that employs the current model, we may find it necessary to construe the stipulation in favor of requiring our review and approval.

In this order we will attempt to list the most important circumstances that we believe do not require approval so that there will be some clarity concerning the authority that the Commission is foregoing in approving this Stipulation. We recognize the difficulty of defining the “rest of the universe.” We therefore do not intend that an omission or incorrect inclusion will bind any future decision we might need to make.

A. The following reorganizations and restructurings do not require Commission approval under the Revised Stipulation in this case:

1. Restructurings of all affiliated interests of Saco River or Pine Tree that are not in the chain of ownership above or below Saco River and Pine Tree, i.e., of other entities owned by the ultimate or intermediate parents or by Saco River or Pine

² The term “restructurings” was invented for use in these Stipulations. Its intent is to narrow the scope of events that will require approval under the statutory definition of “reorganization.” A “reorganization” of a local utility can include such events as the purchase by the parent of 10% or more of an entity doing an entirely different kind of business in another state. “Restructurings” are defined by these stipulations to apply only to a change in ownership or form of the “described entity.”

Tree,³ except in the case where a reorganization of Saco River or Pine Tree results in the creation of an entity that intends to provide goods or services to (or receive them from) Saco River or Pine Tree or subsequently does so, or that intends to provide public utility services in Maine, or subsequently does so.⁴ A restructuring of such an entity that consists of an event other than its “creation,” such as its “extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination” (as stated in 35-A M.R.S.A. § 708(1)(A)) is exempt.

B. In addition, by virtue of the agreement in the Stipulation that certain entities are not affiliated interests of Saco River and Pine Tree, because they do not possess voting control, the following transactions do not constitute reorganizations and therefore do not require approval:

1. The acquisition of additional Series B LLC Interests by the Investing ABRY Funds or Prudential, provided that the acquisition does not result in a change of control of CRC.⁵

2. A transaction that affects the ownership or control of ABRY Partners IV, L.P. and ABRY Investment Partnership, L.P. (each known as an “Investing ABRY Fund”), Prudential, the individual owners of Series A LLC Interests and the Management owners of Series C LLC Interests, as Part III(B) of the Stipulation states that although these entities will acquire economic interests in CRC LLC, they are not affiliated interests because they do not exercise any direct control over CRC (direct control being exercised instead by ABRY partners pursuant to a management contract with the Investing ABRY Fund).

Accordingly, we

F I N D

³ ABRY Partners, which will control the majority of votes on the board of directors of CRC, is defined as an affiliated interest, but is not expressly stated to be in the “chain of ownership.” Nevertheless, under Part III(C)(3)(c), “a transaction which results in ABRY Partners no longer having control over the appointment of a majority of the voting control of the CRC LLC Board” requires approval by the Commission.

⁴ A “recapture” provision states that if an affiliated interest in either of the latter two categories later intends to provide or receive goods or services to/from Saco or Pine Tree, or intends to provide public utility services in Maine, it will seek approval at that time.

⁵ Although not part of the actual recitation of exemptions, the last sentence of Part II(C)(1) (page 10) of the Stipulation states that the acquisition of additional Series B LLC interests by these entities does not constitute a reorganization. The exemptions themselves (Part III(B), at page 15) state that these entities are not affiliated interests of Saco River and Pine Tree.

- APPROVE

BY ORDER OF THE COMMISSION

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.